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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,435	04/23/2001	Diana Kim Fisler	7105	4163
75	590 09/22/2003			
Robert D. Tou		EXAMINER		
Johns Manville 10100 West Uta	e Avenue	HOFFMANN, JOHN M		
Littleton, CO	80217		ART UNIT	PAPER NUMBER
			1731	<u> </u>

DATE MAILED: 09/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Calminor			Application No.	lication No. Applicant(s)						
John Hoffmann	Office Action Summary			09/840,435		FISLER ET AL.				
- The MALING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Edurations or term may be available under the provisions of 3 CFR 1.136(a). In or event, however, may a reply be timely filled or the 30 (c) MONTHS from the maling date of this common and the six (c) MONTHS from the mal				Examiner		Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  Excessions of time may be available under the provisions of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of time of 31 CFR 1.158(a). In no event, however, may a reply be timely filled  Excessions of time may be available under the provisions of the provision of the										
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2a) ☐ This action is FINAL. 2b ☐ This action is non-final.  3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ☐ Claim(s)	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).									
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### Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda et al. 4367012.

Ikeda et al. teaches a water resistant glass composition having silicon dioxide, alumina, boron oxide, and sodium within the claimed ranges (col. 3, lines 33-45). While Ikeda also uses zinc oxide in the composition, the zinc may be present in an amount of as small as 1 wt.% which is deemed to be a small enough amount to be encompassed by the "consisting essentially of" transitional language. Moreover, the addition of zinc oxide does not "materially affect the basic and novel characteristics" of the claimed invention because the zinc oxide enhances the moisture resistance of the glass (col. 5, lines 36-48). Thus, because Ikeda et al. teaches applicant's claimed composition, the properties achieved by the composition must, obviously, be the same. Therefore, the properties of Ikeda's composition must be the same as applicants.

It would have been prima facie obvious at the time the invention was made that the Ikeda et al.'s composition has the same properties as claimed by applicant because Ikeda et al.'s ranges overlap with applicant's claimed ranges. This fact establishes a prima facie case of obviousness (see MPEP §2144.05).

9. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Meringo et al. WO 99/57073.

\*\*\*\*The US Patent equivalent 6313050 of WO 99/57073 will be used to reference De Meringo's WO 99/57073 various teachings.\*\*\*\*

De Meringo et al. teach a glass composition having silicon dioxide; alumina; boron oxide; calcium oxide; and sodium oxide/potassium oxide in overlapping ranges with applicant's claimed composition (col. 5, claim 1). The iron, phosphorous and titanium compounds are optional because their ranges all include zero as an option. Thus, the composition is taught by De Meringo et al. Thus, because De Meringo et al. teaches applicant's claimed composition, the properties achieved by the composition must, obviously, be the same. Therefore, the properties of De Meringo's composition must be the same as applicants.

It would have been prima facie obvious at the time the invention was made that the De Meringo et al.'s composition has the same properties as claimed by applicant because De Meringo et al.'s ranges overlap with applicant's claimed ranges. This fact establishes a prima facie case of obviousness (see MPEP §2144.05).

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### Response to Arguments

Applicant's arguments filed 9 July 2003 have been fully considered but they are not persuasive.

It is argued that the prima facie showing of obviousness (Ikeda) is improper, because Ikeda teaches away from the present invention. It is argued that Ikeda's usage of zirconia constitutes a "teaching away" and that page 18 of the present specification is such that "consisting essentially of" precludes zirconia. First, Ikeda does not teach to use zirconia, rather it is optional (col. 5, lines 51-53). More importantly, applicant's page 18 states that only the preferred embodiments excludes zirconia; to one of ordinary skill this would mean that zirconia could be used in a non-preferred embodiment. The present claims do not preclude zirconia.

IT is further argued that Ikeda does not disclose any examples that fall within the range. The relevance of this is not understood. MPEP 2144.05 sets forth that when the rages overlap, a prima facie showing of obviousness exists. The burden is upon applicant to rebut the Offices prima facie showing. MPEP 2144.05 (III) sets forth two ways to rebut the showing.

It is also noted that the claims only set forth one starting material. The claims are open to adding other compositions. One can prepare a fiber from a composition A, by mixing A with another composition B: the resultant fiber would have a composition that could be very different from A.

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It is further argued that the tensile value of at least 3000 is not disclosed. This is an inherent property of the composition used. If one has fibers of the same composition, one would expect the same mechanical properties.

The arguments regarding De Meringo substantially parallel the arguments made against the rejection over Ikeda. The arguments are not persuasive for substantially the same reasons.

#### Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

John Moffmann Primary Examiner Art Unit 1731

imh